

Appl. No. 09/497,774
Amtd. dated 2/17/2004
Reply to the Office Action of 09/17/2003

REMARKS/ARGUMENTS

Reexamination and reconsideration of this application as amended is requested. By this amendment, Claims 1, 12-14, 22, 28, 33, 34, and 47, have been amended, Claims 15-16, 20, and 42-46 have been canceled without prejudice, and new Claim 48 has been added. After this amendment, Claims 1-14, 17-19, 21-41, and 47-48 remain in this application.

- (1) The Examiner rejected Claim 45 under 35 U.S.C. § 112, second paragraph, due to insufficient antecedent basis for a particular limitation. Claim 45 has been canceled without prejudice. Accordingly, Applicants request that the Examiner withdraw the rejection of Claim 45.
- (2) The Examiner rejected Claims 1 through 6, 8 through 29, 31 through 35, and 37 through 47, under 35 U.S.C. § 102(b) as being anticipated by Ong, United States Patent No. 5, 815,662.

Applicants have canceled Claims 15-16, 20, and 42-46, without prejudice. Further, Applicants have amended Claims 1, 12-14, 22, 28, 33, 34, and 47, and added new Claim 48, to more clearly and distinctly recite the presently claimed invention. Support for the amended claim language, as recited for amended independent Claims 1, 47, and 48, and for all dependent claims depending therefrom, respectively, may be found in the original patent application as filed, for example, see page 3, lines 6-10, lines 17-23, and on page 5, lines 19-24, and also see the exemplary discussion from page 7, line 17, to page 8, line 1. Also, please see previously presented independent Claim 41. Also as a particular example, please see page 3 of the original specification, where the discussion includes the following paragraph:

“The server can realign a respective user with a said data stream to change the location in said data stream from which the user is receiving the data, for example, by moving a pointer associated with the user’s respective socket to another location in said data store, or the position of the user relative to the data in the data stream can be changed in relation to the time of the data being transmitted in said data stream, by realigning the user or recipient with a different server socket and port delivering or transmitting a time shifted part of the data transmission.”

Appl. No. 09/497,774
Amdt. dated 2/17/2004
Reply to the Office Action of 09/17/2003

No new matter was added by the amended claim language.

A proper rejection under 35 U.S.C. § 102(b) requires that a single reference teach (i.e., identically describe) each and every element of the rejected claims as being anticipated by Ong. See MPEP §2131 "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." (Emphasis Added) *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim."

The Examiner, on page 4, lines 3-4, indicates that the scheduler of Ong would be responsible for realigning the respective data stream to change the relative position of the user.

Applicants respectfully disagree with any suggestion that Ong teaches, anticipates, or suggests, the server realigning a respective user from a first respective group corresponding to receiving user requested data at a first location in the respective data stream to a second respective group corresponding to receiving user requested data at a second location in the data stream, the second location being selected by the server to change the location in the data stream the respective user is receiving user requested data to any location in the data stream other than the first location in the data stream, (emphasis added), as recited for independent Claim 1, and for all dependent claims depending therefrom, and as will be discussed in more detail below. Also note that previously presented Claim 41 recites similar language.

Further, new Claim 48 and all dependent claims depending therefrom, respectively, recite the "server for realigning a respective user from a first respective group corresponding to said respective user receiving user requested data being transmitted at a first location in the data flow at a first point in time to a second respective group corresponding to said respective user receiving transmission of said user requested data being transmitted at the first location in the data flow at a second point in time, the second point in time being selected by the server to

Appl. No. 09/497,774
Amdt. dated 2/17/2004
Reply to the Office Action of 09/17/2003

change the relative time the respective user is receiving the transmission of said user requested data being transmitted at the first location in the data flow" (emphasis added), which is also not taught, anticipated, or suggested by Ong, as will be discussed in more detail below.

Additionally, Applicants submit that Ong does not teach, anticipate, or suggest, the server for transmission of the same user requested data in said respective data stream to the respective users in respective groups, and distributing the user load on said server and shifting said user load toward a steady state load on the server by distributing said respective groups over the transmission of said data flow by time of data stream transmission or by place in said data flow transmission, (emphasis added), as recited for independent Claim 25 and for all dependent claims depending therefrom, respectively, as will be discussed in more detail below.

Ong is directed to a methodology for memory caching such that a server (scheduler) will check first if a requested block of data of a specific Title resides in cache memory, and if it does will attempt to send the block of data from cache memory before having to retrieve the requested data from other slower storage (disk drive). Ong's scheduler quantizes all requests for a specific Title to a common timebase and utilizes a single digital data stream to service all viewing requests that occur within the timebase. All clients within a particular granule (time interval) are mapped to a common group address. Please see Ong, column 4, lines 10-17, and lines 43-54, and column 5, lines 15-25, which highlights Ong's memory caching methodology.

Additionally, while the Office Action, such as in the discussion on page 5, item 17, seems to conclude generally that Ong's system moving a user to another group would be inherent if the user fast forwards, rewinds, pauses, or changes the channel that they are viewing, with cited reference to Ong column 7, line 65 to column 8, line 13, Applicants will analyze Ong's teachings in more detail below to show the clear distinctions relative to the presently claimed invention. The specific cited passage in Ong will be analyzed in two parts. First, Applicants will review why Ong's fast forwards, rewinds, or changes of the channel that they are viewing, are distinguishable from the presently claimed invention. Secondly, Applicants will distinguish Ong's pause function from the present claims.

Appl. No. 09/497,774
Arndt, dated 2/17/2004
Reply to the Office Action of 09/17/2003

First, Ong suggests these TV viewing functions may be implemented "using known techniques such as those disclosed in the patents previously mentioned in the Background." See column 8, lines 1-3. The patents previously mentioned specifically with respect to non-pause TV viewing functions will now be addressed below, with reference to Ong's Background on column 1, line 52 to column 2, line 5. Besides prioritizing video server scheduling of continuous data streams over other tasks (indicated for US Patent No. 5,528,513), and two US Patents regarding pause function that will be discussed below, the only remaining patent disclosed is US Patent No. 5,442,390, which stores currently viewed segments of data stream in the viewer's console memory (Note: stored at the user's local console and not at the server) with pointers for handling VCR-like functions at the console. Ong indicates that this last remaining patent discloses using a user's console memory for VCR-like functions, such as fast forward, rewind, or changes of the channel that they are viewing at the user's console, and even pause function done locally using stored data stream in the console memory. None of these functions are performed at the system server.

On the other hand, the presently taught and claimed server and method performs the realignment of the user at the server. This is clearly very different from the discussion in Ong using the user's console memory to perform the VCR-like viewing functions, such as Stop, Pause, Rewind, Fast Forward, etc., with reference to the US Patent No. 5,442,390.

With respect to the pause function, Ong briefly discusses this explicitly with reference to US Patent No. 5,461,415, to indicate a common data stream being sent to users and a look-ahead data stream being reserved in the event any user sends a pause request.

Secondly, Ong briefly mentions US Patent No. 5,453,779, to indicate that a user's viewing is resumed from another ongoing data stream if it will reach the pause point within a tolerable delay. That is, when resuming viewing after a pause request, the system returns the viewer to view data at essentially the same point that was being viewed by the user at the time of the user's pause request, but now using another on-going data stream.

Appl. No. 09/497,774
Amdt. dated 2/17/2004
Reply to the Office Action of 09/17/2003

Thirdly, Ong, column 8, lines 9-12, describes a pause function implementation similar to that indicated above for US Patent No. 5,453,779. When the user resumes Play, the system returns the viewer to view data at essentially the same point that was being viewed by the user at the time of the user's pause request, but now using another on-going data stream or a new data stream.

Note that for the second and third examples of pause viewing functions disclosed in Ong, as listed above, the pause viewing function is at the control of the user, and also that the system returns the user to view data at essentially the same point that was being viewed by the user at the time of the user's pause request.

On the other hand, the presently claimed invention recites the second location being selected by the server to change the location in the data stream the respective user is receiving user requested data to any location in the data stream other than the first location in the data stream, (emphasis added), as recited for independent Claim 1, and for all dependent claims depending therefrom. Also note that previously presented Claim 41 recites similar language. Clearly this claimed feature is not taught, anticipated, or suggested by Ong.

Additionally, new Claim 48 and all dependent claims depending therefrom, respectively, recite the second point in time being selected by the server to change the relative time the respective user is receiving the transmission of said user requested data being transmitted at the first location in the data flow" (emphasis added), which is also not taught, anticipated, or suggested by Ong.

Please note that the presently claimed system server and method selects the location in the data stream to change the location in the data stream the respective user is receiving user requested data to any location in the data stream other than the first location in the data stream, while Ong's pause function under control of the user returns the user to view at essentially the same location in the data stream that was being viewed before.

Appl. No. 09/497,774
Andt. dated 2/17/2004
Reply to the Office Action of 09/17/2003

Also, note that in the presently claimed system the server selects the second point in time to change the relative time the respective user is receiving the transmission of said user requested data being transmitted at the first location in the data flow, while in Ong the user selects the time when to Resume Play and not the system server.

The distinguishing features and functions, as discussed above, are recited for the presently claimed invention while not taught, anticipated, or suggested, by Ong.

Lastly, claim 25 and dependent claims depending therefrom, respectively, recite "distributing the user load on said server and shifting said user load toward a steady state load on the server by distributing said respective groups over the transmission of said data flow by time of data stream transmission or by place in said data flow transmission." (Emphasis added.) This is a novel and valuable feature of the presently claimed invention that is not taught, anticipated, or suggested by Ong.

The Office Action, on pages 10-11, addresses the rejection of Claim 25. In particular, the rejection cites Ong's FIG. 2, and column 3, line 65 to column 4, line 17, to arguably anticipate Claim 25.

Please note that Ong uses predetermined time intervals (granules) to collect in a group for each predetermined time interval all requests from clients to establish a streaming data process for each group. On the other hand, the presently claimed invention distributes and shifts user load toward a steady state load on the server by distributing the groups over the transmission of the data flow. This is very different structure and operation than Ong's predetermined time intervals for capturing any client requests that arrive at the particular predetermined time interval. Ong handles client requests by a memory caching methodology to make more efficient transmission of blocks found in memory at the particular predetermined time interval of the client request and before going to look for the block in the slower hard drive storage. See Ong,

Appl. No. 09/497,774
Amdt. dated 2/17/2004
Reply to the Office Action of 09/17/2003

column 1, lines 42-43, and column 2, lines 9-12, highlighting this problem that Ong attempts to solve.

Note that the presently claimed system and method, on the other hand, spreads the load placed on a transmission facility (a system server) by shifting the load on the server to drive a condition of load peaks toward a steady state condition on the server. This shifting of load on a server solves a resource allocation problem that has plagued the content distribution industry.

Therefore, in view of the discussion above, Applicants believe that the rejection of Claims 1 through 6, 8 through 29, 31 through 35, and 37 through 47, under 35 U.S.C. § 102(b) has been overcome by the amendment and remarks above, and further that new Claim 48 and all dependent claims depending therefrom also are in allowable form. Applicants kindly request that the Examiner withdraw the rejection and allow the claims.

(3) The Examiner rejected Claims 7, 30, and 36, under 35 U.S.C. § 103(a) as being unpatentable over Ong, United States Patent No. 5, 815,662, in lieu of obviousness.

Applicants have amended independent Claims 1, 25 and 33, to more clearly and distinctly recite the present invention. Dependent Claims 7, 30, and 36, depend from independent Claims 1, 25 and 33, respectively, and are believed to be allowable for the same reasons and arguments as discussed above with respect to the rejection of the independent Claims 1, 25 and 33, with respect to Ong.

Accordingly, Applicants believe that dependent Claims 7, 30, and 36 are now also in condition for allowance.

Therefore, in view of the discussion above, Applicants believe that the rejection of Claims 7, 30, and 36 under 35 U.S.C. § 103(a) has been overcome by the amendment and remarks above. Applicants request that the Examiner withdraw the rejection.

Appl. No. 09/497,774
Amdt. dated 2/17/2004
Reply to the Office Action of 09/17/2003

Conclusion

The foregoing is submitted as full and complete response to the Official Action mailed September 17, 2003, and it is submitted that Claims 1-14, 17-19, 21-41, and 47-48, are in condition for allowance. Reconsideration of the rejection is requested. Allowance of Claims 1-14, 17-19, 21-41, and 47-48, is earnestly solicited.

The present application, after entry of this amendment, comprises forty (40) claims, including six (6) independent claims. Applicants have previously paid for forty seven (47) claims, including seven (7) independent claims. Applicants, therefore, believe that an additional fee for claims is currently not due.

However, a petition for a two month extension of time to file this Response has been attached. The Commissioner is authorized to charge the two month extension fee in the amount of \$420, or if this fee amount is insufficient or incorrect, then the Commissioner is authorized to charge the appropriate fee amount to prevent this application from becoming abandoned, or credit any overpayment, to Deposit Account 50-1556.

If the Examiner believes that there are any informalities that can be corrected by Examiner's amendment, or that in any way it would help expedite the prosecution of the patent application, a telephone call to the undersigned at (561) 989-9811 is respectfully solicited.

The Commissioner is hereby authorized to charge any fees that may be required or credit any overpayment to Deposit Account 50-1556.

Appl. No. 09/497,774
Amdt. dated 2/17/2004
Reply to the Office Action of 09/17/2003

In view of the preceding discussion, it is submitted that the claims are in condition for allowance. Reconsideration and allowance of the claims is requested.

Date: 2/17/04

Respectfully submitted,

By: Jose Gutman

Reg. No. 35,174

Please send all correspondence concerning
this patent application to:

Jose Gutman, Esq.
FLEIT, KAIN, GIBBONS, GUTMAN
BONGINI & BIANCO P.L.
551 N.W. 77th Street, Suite 111
Boca Raton, FL 33487
Tel (561) 989-9811 Fax (561) 989-9812